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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,012	10/07/2003	Michael Furst	FURST, M-1	4718
25889	7590	11/23/2005	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/680,012	<b>Applicant(s)</b> FURST, MICHAEL	
<b>Examiner</b> Catherine Simone	<b>Art Unit</b> 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
(b)  They raise the issue of new matter (see NOTE below);  
(c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1,2,7,9-26 and 28-31.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment.  
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13.  Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed 11/14/05 have been fully considered but they are not persuasive. Applicant argues that "even if the barrier coating of *Stierli* were considered a "film" layer as suggested by the Examiner, there is no disclosure or suggestion in *Stierli* that this coating has a smaller coefficient of elongation than the plastic sheet 3. Simply because the plastic film layer 3 and the barrier coating 2 may be made of different materials does not mean that plastic film layer 3 will have a larger coefficient of elongation than barrier coating 2". However, it is to be pointed out that the plastic film layer 3 in *Stierli* is made of a polyolefin film such as polyethylene (see col. 3, lines 66-67), which is a similar material to that of the first film layer located further away from the bituminous layer disclosed in Applicant's present application. Also, the barrier coating (film) layer 2 in *Stierli* provides increased dimensional stability to the laminate (see col. 5, lines 1-6) and prevents undesirable curling of the laminate upon exposure to elevated temperatures which is similar to that of the second film layer disclosed in Applicant's present application. Therefore, *Stierli* inherently teaches the plastic film layer 3 having a larger coefficient of elongation than barrier coating (film) layer 2.

Applicant further argues with regards to *Jenkins et al.* that "simply because barrier layer 20 may be made from a different material than polymeric layers 16 and 18 does not mean that these polymeric layers will have a larger coefficient of elongation than the barrier layer". However, it is to be pointed out in *Jenkins et al.* that polymer layers 16 and 18 are made of a polyolefin film such as polyethylene (see col. 4, lines 8-9) which is similar to that of the first film

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layer located further away from the bituminous layer disclosed in the Applicant's present application and barrier layer 20 is made of polyamide and polyethylene terephthalate (see col. 4, lines 62-64) and provides increased dimensional stability to the laminate which is similar to that of the second film layer disclosed in Applicant's present application. Therefore, Jenkins et al. inherently teaches the polymeric layers 16 and 18 having a larger coefficient of elongation than barrier layer 20.

Furthermore, with regards to *Wiercinski et al.*, Applicant argues that "there is no disclosure or suggestion that layer 22 has a larger coefficient of elongation than layer 22 as suggested by the Examiner". However, it is to be pointed out that layer 22 in *Wiercinski et al.* is made up of polypropylene, high density polyethylene, low density polyethylene and linear low density polyethylene (see col. 6, lines 7-10) which are similar materials to that of the first film layer located further away from the bituminous layer disclosed in Applicant's present application. In addition, *Wiercinski et al.* teaches a second film layer (barrier layer) between the first film layer 22 and the bituminous layer which comprises polyamide and polyethylene terephthalate (see col. 6, lines 60-63), which are similar materials to that of the second film layer disclosed in Applicant's present application. Therefore, *Wiercinski et al.* inherently teaches a first film layer 22 having a larger coefficient of elongation than the second film layer (barrier layer).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Catherine A. Simone  
Examiner  
Art Unit 1772  
November 17, 2005



HAROLD PYON  
SUPERVISORY PATENT EXAMINER

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11/18/05